IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. No. 1:15-cr-10001-JDB-11

MARLOS MANN,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR RELIEF UNDER THE FIRST STEP ACT OF 2018

In pro se filings dated February 11 and April 4, 2019, the Defendant, Marlos Mann, sought relief pursuant to the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018) (the "FSA"). (Docket Entry ("D.E.") 847, 850.) On June 6, 2019, First Assistant Federal Defender Tyrone J. Paylor filed on behalf of the Defendant a "Notice of Completed Review - No Relief" under the FSA. (D.E. 858.) In accordance with an order of the Court, the Government has filed a response (D.E. 859), and the matter is now ripe for review.

In a superseding indictment filed August 17, 2015, Defendant was charged with violations of 21 U.S.C. § 841(a)(1) with respect to crack cocaine and marijuana. (D.E. 317.) The charged offenses occurred in 2014 and 2015. Pursuant to a guilty plea to a marijuana count, he was sentenced on January 5, 2017, to eighty-five months' incarceration, to be followed by four years of supervised release. (D.E. 697.) He is currently confined in Bureau of Prisons custody.

"Federal courts are forbidden, as a general matter, to 'modify a term of imprisonment once it has been imposed.'" *Freeman v. United States*, 564 U.S. 522, 526 (2011) (quoting 18 U.S.C. §

3582(c)). However, the rule is subject to certain narrow exceptions, *id.*, including the FSA, *United States v. Terrell*, No. 2:09-CR-031, 2019 WL 3431449, at *1 (E.D. Tenn. July 29, 2019).

The statute, signed into law on December 21, 2018, "modified prior sentencing law and expanded vocational training, early-release programs, and other programming designed to reduce recidivism." *United States v. Boulding*, 379 F. Supp. 3d 646, 650 (W.D. Mich. 2019) (quoting *United States v. Simmons*, 375 F. Supp. 3d 379, 385 (E.D.N.Y. 2019)), *appeal filed* (6th Cir. June 25, 2019) (No. 19-1706) & (6th Cir. May 28, 2019) (No. 19-1590). While the law made certain previous statutory changes retroactive, its scope was a limited one.

Specifically, the FSA permits the sentencing court to reduce a sentence "for a covered offense" on motion of the defendant. § 404(b), 132 Stat. at 5222. A "covered offense" is defined as "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010." § 404(a), 132 Stat. at 5222. Sections 2 and 3 of the Fair Sentencing Act of 2010 dealt with certain crack cocaine offenses. *See United States v. Majors*, 376 F. Supp. 3d 806, 808 (M.D. Tenn. 2019), *appeal filed* (6th Cir. June 13, 2019) (No. 19-5635). Accordingly, "the First Step Act permits the retroactive reduction of certain drug trafficking sentences, but applies only to those convicted of crack cocaine offenses." *Id.* at 809 (quoting *United States v. Jones*, No. 3:94-CR-00090, 2019 WL 1586814, at *1 (M.D. Tenn. Apr. 12, 2019)); *see United States v. Wiseman*, ___ F.3d ___, 2019 WL 3367615, at *3 (6th Cir. July 26, 2019) ("Section 404 of the Act makes retroactive only certain statutory changes pertaining to threshold crack cocaine weights triggering mandatory minimum sentences that were enacted under the Fair Sentencing Act of 2010.").

As Defendant was convicted of a marijuana, rather than a crack cocaine, offense, the FSA provides him no relief. *See United States v. Drayton*, Civil Action No. 19-2032-KHV, Criminal Action No. 10-20018-01-KHV, 2019 WL 464872, at *2 (D. Kan. Feb. 6, 2019) (because defendant was convicted of an offense involving marijuana, FSA did not apply). Moreover, the offense was not committed before August 3, 2010, as § 404 requires. The motion is DENIED.

IT IS SO ORDERED this 15th day of August 2019.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE